



State of Wisconsin
2013 - 2014 LEGISLATURE



LRB-1023/P4
CMH:wlj&kjf:jm

DOA:.....Bong, BB0345 – Procurement reforms

FOR 2013-2015 BUDGET -- NOT READY FOR INTRODUCTION

AN ACT ...; **relating to:** the budget.

Analysis by the Legislative Reference Bureau

STATE GOVERNMENT

STATE PROCUREMENT

Current law generally authorizes state agencies to purchase materials, supplies, or equipment under certain circumstances. With some exceptions, purchases for which the estimated cost exceeds \$50,000 require bids to be invited or proposals to be solicited. Also, under current law, if a state agency enters into or renews a contract for services that involves an estimated expenditure of more than \$25,000, the agency must conduct either a uniform cost-benefit analysis, for a new contract, or a continued appropriateness review, for a contract renewal. This bill raises the threshold to \$50,000 for either and exempts the following services: services that must, by law, be performed by contract; services incidental to the purchase of a commodity; services that must be provided per a contract, license, or warranty; services that cannot be performed by state employees because the state lacks the required infrastructure; services that are expected to be completed within 12 months; and Web-based software application services that are delivered and managed remotely.

Current law requires DOA to certify a business as a disabled veteran-owned business, a woman-owned business, or a minority business, but has different requirements for each certification. For instance, DOA may certify a business as a minority business if another state agency, a municipality, the federal government,

an American Indian tribe, or, if it uses substantially the same procedures as DOA would use, a private business certifies the business as such. This bill makes the certification practice consistent by permitting DOA to certify a business as a disabled veteran-owned business or a woman-owned business if one of the entities listed above certifies it as such. Under current law, for the purpose of certifying a business as a disabled veteran-owned business, the disabled veteran must be verified by DVA as a veteran, be a Wisconsin resident, and have an award from the federal Department of Veterans Affairs of a service-connected disability rating of at least 30 percent. This bill changes that percent to 20 percent.

Under current law, DOA must maintain a list of entities that are ineligible for state contracts because they have violated a state procurement contract or a statute governing state procurement. This bill requires DOA to include on the list an entity that has been debarred from contracting with the federal government or any other state agency.

Under current law, in a report that DOA submits to the governor and the legislature, DOA must document the success of the division of legal services in reducing the state's use of contracted employees. This bill eliminates that requirement from the report.

Under current law, DOA, or any agency to which DOA has delegated the authority, may maintain a list of persons who must be notified of bids or competitive sealed proposals solicited by DOA or another agency for state procurement. This bill allows only DOA to maintain the bidders list.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 16.004 (15) (bm) of the statutes is repealed.

SECTION 2. 16.283 (1) (b) 3. of the statutes is amended to read:

16.283 (1) (b) 3. A person who is in receipt of an award from the U.S. department of veterans affairs of a service-connected disability rating under [38 USC 1114](#) or [1134](#) of at least 30 20 percent.

SECTION 3. 16.283 (3) (b) of the statutes is renumbered 16.283 (3) (b) 1m.

SECTION 4. 16.283 (3) (b) 2m. of the statutes is created to read:

16.283 (3) (b) 2m. The department may, without conducting an investigation, certify a business, financial adviser, or investment firm having its principal place of

business in this state and currently performing a useful business function if the business, financial advisor, or investment firm is certified, or otherwise classified, as a disabled veteran-owned business, financial advisor, or investment firm by an agency or municipality of this or another state, a federally recognized American Indian tribe, or the federal government, or by a private business with expertise in certifying disabled veteran-owned businesses if the business uses substantially the same procedures the department uses in making a determination under subd. 1m.

SECTION 5. 16.283 (3) (d) of the statutes is amended to read:

16.283 (3) (d) If a business, financial adviser, or investment firm applying for certification under this section fails to provide the department with sufficient information to enable the department to conduct an investigation under par. (b) 1m. or does not qualify for certification under par. (b), the department shall deny the application. A business, financial adviser, or investment firm whose application is denied may, within 30 days after the date of the denial, appeal in writing to the secretary. The secretary shall enter his or her final decision within 30 days after receiving the appeal.

SECTION 6. 16.285 (1) (b) of the statutes is amended to read:

16.285 (1) (b) The department shall implement a program for the certification of woman-owned businesses. ~~The department shall compile and periodically update a list of businesses certified under this section and shall make the list available to the public on the Internet~~ may, without conducting an investigation, certify a business currently performing a useful business function in this state as a woman-owned business if the business is certified, or otherwise classified, as a woman-owned business by an agency or municipality of this or another state, a federally recognized American Indian tribe, or the federal government, or by a

private business with expertise in certifying woman-owned businesses if the business uses substantially the same process as the department promulgates by rule for implementing this subsection.

SECTION 7. 16.285 (2) of the statutes is amended to read:

16.285 (2) The department shall develop, maintain, and keep current a computer database of businesses in the state that are owned by women, containing demographic statistics and information on the types of industries represented, sales volume and growth rates, generation of jobs by both new and existing businesses, and any other relevant characteristics. The department shall compile and periodically update a list of businesses certified under sub. (1) and make the list available to the public on the Internet.

SECTION 8. 16.287 (2) (c) of the statutes is amended to read:

16.287 (2) (c) The department, without investigation, may certify a business incorporated in this state or having its principal place of business in this state if the business is certified or otherwise classified as a minority business by an agency or municipality of this or another state, a federally recognized American Indian tribe, or the federal government, or by a private business with expertise in certifying minority businesses if the private business uses substantially the same procedures as those used by the department in making a determination under par. (b).

SECTION 9. 16.287 (2) (e) of the statutes is amended to read:

16.287 (2) (e) If a business refuses to provide the department with sufficient information to enable it to conduct an investigation under par. (b) or if the business does not qualify for certification under par. (b), (c) or (d), the department shall deny the application. A business whose application is denied may, within 30 days after

the date of the denial, appeal in writing to the secretary. The secretary shall enter his or her final decision within 30 days after receiving the appeal.

SECTION 10. 16.70 (2) of the statutes is amended to read:

16.70 (2) “Authority” means a body created under subch. II of ch. 114 or subch. III of ch. 149 or under ch. 231, 232, 233, 234, 237, 238, or 279.

SECTION 11. 16.70 (2j) of the statutes is created to read:

16.70 (2j) “Commodity” means materials, supplies, or equipment, but does not include a service.

SECTION 12. 16.70 (3) of the statutes is amended to read:

16.70 (3) “Contractual services” includes all services, materials to be furnished by a service provider in connection with services, and any limited trades work involving less than \$30,000 to be done for or furnished to the state or any agency, but does not include maintenance or support that is incidental to the purchase of a commodity.

SECTION 13. 16.70 (3j) of the statutes is created to read:

16.70 (3j) “Delegated agency” means an agency that has a designated purchasing agent to whom the department has delegated the authority to purchase under s. 16.71 (1).

SECTION 14. 16.70 (8) of the statutes is amended to read:

16.70 (8) “Municipality” means a county, city, village, town, school district, board of school directors, sewer district, drainage district, technical college district, authority, or any other public or quasi-public corporation, officer, board or other body having the authority to award public contracts.

SECTION 15. 16.70 (13m) of the statutes is created to read:

16.70 (13m) “Standard specification” means a requirement or qualification that is chemical, physical, or both chemical and physical that describes the commodity or service to be purchased but is not a trade name.

SECTION 16. 16.701 (title) of the statutes is amended to read:

16.701 (title) Subscription service and procurement system.

SECTION 17. 16.701 (1m) of the statutes is created to read:

16.701 (1m) The department may provide an electronic procurement system to manage all aspects of procurement under this subchapter. The electronic procurement system may supplement or supplant the subscription service under sub. (1). If the department provides an electronic procurement system under this subsection, the department may require that an agency use the system. The department may assess agencies and vendors for the costs of the system under this subsection in accordance with a method the department develops.

SECTION 18. 16.701 (2) of the statutes is amended to read:

16.701 (2) The department may permit prospective vendors to provide product or service information through the service established under sub. (1) or through the system provided under sub. (1m). The department may prescribe fees or establish fees through a competitive process for the use of the service or system under this subsection.

SECTION 19. 16.7015 of the statutes is amended to read:

16.7015 Bidders list. The department may maintain a bidders list. ~~Any agency to which the department delegates purchasing authority under s. 16.71 (1) may maintain a bidders list if authorized by the delegation.~~ The bidders list shall include the names and addresses of all persons who request to be notified of bids or competitive sealed proposals, excluding those to be awarded under s. 16.75 (1) (c) or

(2m) (c), that are solicited by the department or ~~other~~ delegated agency for the procurement of materials, supplies, equipment, or contractual services under this subchapter. Any bidders list ~~maintained by the department~~ may include the names and addresses of any person who requests to be notified of bids or competitive sealed proposals that are solicited by any agency. The department or ~~other~~ delegated agency shall notify each person on ~~its~~ the bidders list of all bids or competitive sealed proposals that are solicited by the department or ~~other~~ delegated agency. The department or ~~other~~ agency may remove any person from ~~its~~ the bidders list for cause.

SECTION 20. 16.705 (1) of the statutes is amended to read:

16.705 (1) The department or ~~its agents~~ a delegated agency may contract for services which can be performed more economically or efficiently by such contract. The department shall, by rule, prescribe uniform procedures for determining whether services are appropriate for contracting under this subsection.

SECTION 21. 16.705 (1b) (intro.) and (c) of the statutes are created to read:

16.705 (1b) (intro.) The determinations under sub. (1) do not apply to a contract entered into by any of the following:

(c) The department under s. 16.848 (1).

****NOTE: This is reconciled s. 16.705 (1b) (c). This SECTION has been affected by drafts with the following LRB numbers: LRB-1023/p2 and LRB-1130/6.

SECTION 22. 16.705 (1m) of the statutes is renumbered 16.705 (1b) (a) and amended to read:

16.705 (1b) (a) ~~Subsection (1) does not apply to contracts entered into by the~~
The service award board under s. 16.25 (4) (b).

SECTION 23. 16.705 (1n) of the statutes, as affected by [2011 Wisconsin Act 266](#), is renumbered 16.705 (1b) (b) and amended to read:

16.705 (1b) (b) ~~Subsection (1) does not apply to a contract entered into by the~~ The department of corrections for global positioning system tracking services under s. 301.48 (3) or 301.49.

SECTION 24. 16.705 (1r) (intro.) of the statutes is amended to read:

16.705 (1r) (intro.) Notwithstanding s. 16.75 (2m) and (3m), and except as provided in s. 16.75 (2) (b) and (7), the department ~~and its agents~~ or a delegated agency may purchase contractual services only if those services are performed within the United States, which, notwithstanding s. 990.01 (40) and (44), includes only the 50 states and the District of Columbia. This requirement does not apply to any of the following:

SECTION 25. 16.705 (2) of the statutes, as affected by [2011 Wisconsin Act 32](#), is renumbered 16.705 (2) (a) and amended to read:

16.705 (2) (a) The department shall promulgate rules for the procurement of contractual services by the department ~~and its designated agents~~ or a delegated agency, including but not limited to rules prescribing approval and monitoring processes for contractual service contracts; except as provided in par. (b), a requirement for agencies, except for the University of Wisconsin System, to conduct a uniform cost-benefit analysis of each proposed contractual service procurement involving an estimated expenditure of more than ~~\$25,000~~ \$50,000 in accordance with standards prescribed in the rules; and, except as provided in par. (b), a requirement for agencies, except for the University of Wisconsin System, to review periodically, and before any renewal, the continued appropriateness of contracting under each

contractual services agreement involving an estimated expenditure of more than ~~\$25,000~~ \$50,000.

(c) Each officer requesting approval to engage any person to perform contractual services shall submit to the department written justification for such contracting which shall include a description of the contractual services to be procured, justification of need, justification for not contracting with other agencies, a specific description of the scope of contractual services to be performed, and justification for the procurement process if a process other than competitive bidding is to be used. The department may not approve any contract for contractual services unless it is satisfied that the justification for contracting conforms to the requirements of this section and ss. 16.71 to 16.77.

SECTION 26. 16.705 (2) (b) of the statutes is created to read:

16.705 (2) (b) A cost-benefit analysis or continued appropriateness review is not required for the following services:

1. Services that federal or state law requires to be performed by contract.
2. Services that are incidental to the purchase of a commodity.
3. Services that must be provided per a contract, license, or warranty, by the original equipment manufacturer or publisher.
4. Services that cannot be performed by state employees because the state lacks the required infrastructure.
5. Services that are expected to be completed within 12 months.
6. Web-based software application services that are delivered and managed remotely.

SECTION 27. 16.705 (9) of the statutes is amended to read:

16.705 (9) The department shall maintain a list of persons that are or have been a party to a contract with the state under this subchapter who have violated a provision of this subchapter or a contract under this subchapter or who have been debarred from contracting with the federal government or any agency. The parties on the list are ineligible for state contracts and no state contract may be awarded to a party on the ineligible list. The department may remove any party from the ineligible list if the department determines that the party's practices comply with this subchapter and ~~provide~~ the party provides adequate safeguards against future violations of this subchapter or contracts under this subchapter or, if the person was on the list due to debarment, the person is no longer debarred. The department shall promulgate rules that provide procedures to implement this subsection.

SECTION 28. 16.71 (3) of the statutes is amended to read:

16.71 (3) ~~If~~ The department, department of revenue, or delegated agency shall comply with the requirements under s. 565.25 if the department makes or delegates to the department of revenue or to any other designated purchasing agent under sub. (1) delegated agency the authority to make a major procurement, as defined in s. 565.01 (4), for the department of revenue, ~~the department, department of revenue,~~ or designated purchasing agent shall comply with the requirements under s. 565.25.

SECTION 29. 16.72 (2) (a) of the statutes is renumbered 16.72 (2) (a) 1. and amended to read:

16.72 (2) (a) 1. The department shall prepare standard specifications, as far as possible, for all state purchases. ~~By "standard specifications" is meant a specification, either chemical or physical or both, prepared to describe in detail the article which the state desires to purchase, and trade names shall not be used~~ statewide except those purchases under subd. 2. On the formulation, adoption and

modification of any standard specifications, the department of ~~administration~~ shall also seek and be accorded without cost, the assistance, advice, and cooperation of other agencies and officers.

3. Each specification adopted under subd. 1. or 2. for any ~~commodity~~ purchase shall, insofar as possible, satisfy the requirements of any and all agencies which use it in common.

SECTION 30. 16.72 (2) (a) 2. of the statutes is created to read:

16.72 (2) (a) 2. Delegated agencies shall adopt standard specifications for all delegated purchases.

SECTION 31. 16.72 (2) (b) of the statutes is amended to read:

16.72 (2) (b) Except as provided in ss. 16.25 (4) (b), 16.751, and 565.25 (2) (a) 4., the department or delegated agency shall prepare or review specifications for all materials, supplies, equipment, other permanent personal property and contractual services not purchased under standard specifications. Such “nonstandard specifications” may be generic or performance specifications, or both, prepared to describe in detail the article which the state desires to purchase either by its physical properties or by its programmatic utility. When appropriate for such nonstandard items or services, trade names may be used to identify what the state department or delegated agency requires, but wherever possible 2 or more trade names shall be designated and the trade name of any Wisconsin producer, distributor or supplier shall appear first.

SECTION 32. 16.72 (2) (c) of the statutes is amended to read:

16.72 (2) (c) To the extent possible, the department or delegated agency shall write specifications so as to permit the purchase of materials manufactured in the United States, as defined in s. 16.754 (1) (b).

SECTION 33. 16.72 (2) (e) (intro.) of the statutes is amended to read:

16.72 (2) (e) (intro.) In writing the specifications under this subsection, the department ~~and any other designated purchasing agent under s. 16.71 (1) or~~ delegated agency shall incorporate requirements for the purchase of products made from recycled materials and recovered materials if their use is technically and economically feasible. Each authority other than the University of Wisconsin Hospitals and Clinics Authority, the Lower Fox River Remediation Authority, and the Health Insurance Risk-Sharing Plan Authority, in writing specifications for purchasing by the authority, shall incorporate requirements for the purchase of products made from recycled materials and recovered materials if their use is technically and economically feasible. The specifications shall include requirements for the purchase of the following materials:

SECTION 34. 16.72 (2) (f) of the statutes is amended to read:

16.72 (2) (f) In writing specifications under this subsection, the department, ~~any other designated purchasing agent under s. 16.71 (1)~~ delegated agency, and each authority other than the University of Wisconsin Hospitals and Clinics Authority, the Lower Fox River Remediation Authority, and the Health Insurance Risk-Sharing Plan Authority shall incorporate requirements relating to the recyclability and ultimate disposition of products and, wherever possible, shall write the specifications so as to minimize the amount of solid waste generated by the state, consistent with the priorities established under s. 287.05 (12). All specifications under this subsection shall discourage the purchase of single-use, disposable products and require, whenever practical, the purchase of multiple-use, durable products.

SECTION 35. 16.72 (4) (a) of the statutes is amended to read:

16.72 (4) (a) Except as provided in ss. 16.71 and 16.74 or as otherwise provided in this subchapter and the rules promulgated under s. 16.74 and this subchapter, all supplies, materials, equipment, and contractual services shall be purchased for and furnished to any agency only upon requisition to the department. The department shall prescribe the form, contents, number, and disposition of requisitions and shall promulgate rules as to time and manner of submitting such requisitions for processing. No Except as provided in ss. 16.71 and 16.74 or as otherwise provided in this subchapter and the rules promulgated under s. 16.74 and this subchapter, no agency or officer may engage any person to perform contractual services without the specific prior approval of the department for each such engagement. Purchases of supplies, materials, equipment, or contractual services by the legislature, the courts, or legislative service or judicial branch agencies do not require approval under this paragraph.

SECTION 36. 16.72 (4m) of the statutes is repealed.

SECTION 37. 16.73 (1m) of the statutes is created to read:

16.73 (1m) The department or a delegated agency may allow municipalities to participate in state procurement solicitations and use any current state contract.

SECTION 38. 16.73 (5) of the statutes, as affected by [2011 Wisconsin Act 32](#), is amended to read:

16.73 (5) After the department designates the board of regents of the University of Wisconsin System or designates the University of Wisconsin–Madison as its purchasing agent for any purpose under s. 16.71 (1) a delegated agency, the board or the University of Wisconsin–Madison may enter into a contract to sell any materials, supplies, equipment or contractual services purchased by the board or the University of Wisconsin–Madison to the University of Wisconsin Hospitals and

Clinics Authority, and may contract with the University of Wisconsin Hospitals and Clinics Authority for the joint purchase of any materials, supplies, equipment or contractual services if the sale or purchase is made consistently with that delegation and with this subchapter.

SECTION 39. 16.75 (1) (a) 1. of the statutes is amended to read:

16.75 (1) (a) 1. All orders awarded or contracts made by the department or a delegated agency for all materials, supplies, equipment, and contractual services to be provided to any agency, except as otherwise provided in par. (c) and subs. (2), (2g), (2m), (3m), (3t), (6), (7), (8), (9), (10e), and (10m) and ss. 16.705 (1r), 16.73 (4) (a), 16.751, 16.754, ~~16.964 (8)~~, 50.05 (7) (f), 153.05 (2m) (a), 165.987, and 287.15 (7), shall be awarded to the lowest responsible bidder, taking into consideration life cycle cost estimates under sub. (1m), when appropriate, the location of the agency, the quantities of the articles to be supplied, their conformity with the specifications, and the purposes for which they are required and the date of delivery.

***NOTE: This is reconciled s. 16.75 (1) (a) 1. This SECTION has been affected by drafts with the following LRB numbers: LRB-0839/p3 and LRB-1023/p3.

SECTION 40. 16.75 (1) (a) 2. of the statutes is amended to read:

16.75 (1) (a) 2. If a vendor is not a Wisconsin producer, distributor, supplier or retailer and the department determines that the state, foreign nation or subdivision thereof in which the vendor is domiciled grants a preference to vendors domiciled in that state, nation or subdivision in making governmental purchases, the department, a delegated agency, and any agency making purchases under s. 16.74 shall give a preference over that vendor to Wisconsin producers, distributors, suppliers and retailers, if any, when awarding the order or contract. The department

may enter into agreements with states, foreign nations and subdivisions thereof for the purpose of implementing this subdivision.

SECTION 41. 16.75 (1) (b) 1. and 3. of the statutes, as affected by [2011 Wisconsin Act 32](#), are consolidated, renumbered 16.75 (1) (b) and amended to read:

16.75 (1) (b) ~~Except as provided in subd. 2., when~~ When the estimated cost exceeds ~~\$25,000~~ \$50,000, the department or delegated agency shall invite bids to be submitted. ~~3.~~ If subd. ~~1. or 2.~~ requires bids are to be solicited, the department or delegated agency either shall solicit sealed bids to be opened publicly at a specified date and time, or shall solicit bidding by auction to be conducted electronically at a specified date and time. Whenever bids are invited, due notice inviting bids shall be published as a class 2 notice, under ch. 985 or posted on the Internet at a site determined or approved by the department. The bid opening or auction shall occur at least 7 days after the date of the last insertion of the notice or at least 7 days after the date of posting on the Internet. The notice shall specify whether sealed bids are invited or bids will be accepted by auction, and shall give a clear description of the materials, supplies, equipment, or contractual services to be purchased, the amount of any bond, share draft, check, or other draft to be submitted as surety with the bid or prior to the auction, and the date and time that the public opening or the auction will be held.

SECTION 42. 16.75 (1) (b) 2. of the statutes, as created by [2011 Wisconsin Act 32](#), is repealed.

SECTION 43. 16.75 (1) (c) of the statutes is amended to read:

16.75 (1) (c) Except as provided in sub. (7), when the estimated cost is ~~\$25,000~~ \$50,000 or less, the award may be made in accordance with simplified procedures established by the department for such transactions.

SECTION 44. 16.75 (1m) of the statutes is amended to read:

16.75 (1m) The department or a delegated agency shall award each order or contract for materials, supplies or equipment on the basis of life cycle cost estimates, whenever such action is appropriate. Each authority other than the University of Wisconsin Hospitals and Clinics Authority, the Lower Fox River Remediation Authority, the Wisconsin Aerospace Authority, and the Health Insurance Risk-Sharing Plan Authority shall award each order or contract for materials, supplies or equipment on the basis of life cycle cost estimates, whenever such action is appropriate. The terms, conditions and evaluation criteria to be applied shall be incorporated in the solicitation of bids or proposals. The life cycle cost formula may include, but is not limited to, the applicable costs of energy efficiency, acquisition and conversion, money, transportation, warehousing and distribution, training, operation and maintenance and disposition or resale. The department shall prepare documents containing technical guidance for the development and use of life cycle cost estimates, and shall make the documents available to interested parties, including local governmental units.

SECTION 45. 16.75 (2m) (a) of the statutes is amended to read:

16.75 (2m) (a) Except as otherwise required by law, if the secretary or his or her designee determines that the use of competitive sealed bidding is not practicable or not advantageous to this state, the department or delegated agency may solicit competitive sealed proposals. Each request for competitive sealed proposals shall state the relative importance of price and other evaluation factors.

SECTION 46. 16.75 (2m) (b) 1. and 3. of the statutes, as affected by [2011 Wisconsin Act 32](#), are consolidated, renumbered 16.75 (2m) (b) and amended to read:

16.75 (2m) (b) ~~Except as provided in subd. 2., when~~ When the estimated cost exceeds ~~\$25,000~~ \$50,000, the department or delegated agency may invite competitive sealed proposals. ~~3.~~ If competitive sealed proposals are to be invited, the department or delegated agency shall publish a class 2 notice under ch. 985 or post notice on the Internet at a site determined or approved by the department. The notice shall describe the materials, supplies, equipment, or contractual services to be purchased, the intent to make the procurement by solicitation of proposals rather than by solicitation of bids, any requirement for surety and the date the proposals will be opened, which shall be at least 7 days after the date of the last insertion of the notice or at least 7 days after the date of posting on the Internet.

SECTION 47. 16.75 (2m) (b) 2. of the statutes, as created by [2011 Wisconsin Act 32](#), is repealed.

SECTION 48. 16.75 (2m) (c) of the statutes is amended to read:

16.75 (2m) (c) When the estimated cost is ~~\$25,000~~ \$50,000 or less, the department or delegated agency may award the order or contract in accordance with simplified procedures established by the department for such transactions.

SECTION 49. 16.75 (2m) (d) of the statutes is amended to read:

16.75 (2m) (d) For purposes of clarification, the department or delegated agency may discuss the requirements of the proposed order or contract with any person who submits a proposal and shall permit any offerer to revise his or her proposal to ensure its responsiveness to those requirements.

SECTION 50. 16.75 (2m) (e) of the statutes is amended to read:

16.75 (2m) (e) The department or delegated agency shall determine which proposals are reasonably apt to be awarded the order or contract and shall provide each offerer of such a proposal a fair and equal opportunity to discuss the proposal.

The department or delegated agency may negotiate with each offerer in order to obtain terms that are advantageous ~~to this state~~. Prior to the award of the order or contract, any offerer may revise his or her proposal. The department or delegated agency shall keep a written record of all meetings, conferences, oral presentations, discussions, negotiations, and evaluations of proposals under this section.

SECTION 51. 16.75 (2m) (f) of the statutes is amended to read:

16.75 **(2m)** (f) In opening, discussing, and negotiating proposals, the department or delegated agency may not disclose any information that would reveal the terms of a competing proposal.

SECTION 52. 16.75 (2m) (g) of the statutes is amended to read:

16.75 **(2m)** (g) After receiving each offerer's best and final offer, the department or delegated agency shall determine which proposal is most advantageous and shall award the order or contract to the person who offered it. ~~The department's department or delegated agency shall base its determination shall be based only on~~ price and the other evaluation factors specified in the request for proposals. The department or delegated agency shall state in writing the reason for the award and shall place the statement in the contract file. This paragraph does not apply to procurements under s. 16.751.

SECTION 53. 16.75 (3m) (b) 1. of the statutes is amended to read:

16.75 **(3m)** (b) 1. The department, a delegated agency, and any agency making purchases under s. 16.74 shall attempt to ensure that 5 percent of the total amount expended under this subchapter in each fiscal year is paid to minority businesses.

SECTION 54. 16.75 (3m) (b) 2. of the statutes is amended to read:

16.75 **(3m)** (b) 2. The department, a delegated agency, and any agency making purchases under s. 16.74 shall make efforts to ensure that a portion of the total

amount expended under this subchapter in each fiscal year is paid to disabled veteran-owned businesses.

SECTION 55. 16.75 (3m) (b) 3. of the statutes is amended to read:

16.75 **(3m)** (b) 3. Except as provided under sub. (7), the department, a delegated agency, and any agency making purchases under s. 16.74 may purchase materials, supplies, equipment, and contractual services from any minority business or disabled veteran-owned business, or a business that is both a minority business and a disabled veteran-owned business, submitting a qualified responsible competitive bid that is no more than 5 percent higher than the apparent low bid or competitive proposal that is no more than 5 percent higher than the most advantageous proposal. In administering the preference for minority businesses or disabled veteran-owned businesses established in this paragraph, the department, a delegated agency, and any agency making purchases under s. 16.74 shall maximize the use of minority businesses or disabled veteran-owned businesses which are incorporated under ch. 180 or which have their principal place of business in this state.

SECTION 56. 16.75 (3t) (c) (intro.) of the statutes is amended to read:

16.75 **(3t)** (c) (intro.) The department of corrections shall periodically provide to the department of administration a current list of all materials, supplies, equipment, or contractual services, excluding commodities, that are supplied by prison industries, as created under s. 303.01. The department of administration shall distribute the list to all ~~designated purchasing agents under s. 16.71 (1) delegated agencies~~. Except as otherwise provided in sub. (6) (am), prior to seeking bids or competitive sealed proposals with respect to the purchase of any materials, supplies, equipment, or contractual services enumerated in the list, the department

of administration or ~~any other designated purchasing agent under s. 16.71 (1)~~ delegated agency shall offer prison industries the opportunity to supply the materials, supplies, equipment, or contractual services if the department of corrections is able to provide them at a price that is equal to or lower than one which may be obtained through competitive bidding or competitive sealed proposals and is able to conform to the specifications. If the department of administration or ~~other purchasing agent~~ delegated agency is unable to determine whether the price of prison industries is equal to or lower than one obtained through competitive bidding or competitive sealed proposals, it may solicit bids or competitive proposals before awarding the order or contract. This paragraph does not apply to the printing of the following forms:

SECTION 57. 16.75 (5) of the statutes is amended to read:

16.75 (5) The department or delegated agency may require of bidders, persons making proposals under sub. (2m) or contractors such sureties as, in its judgment, are deemed advisable and may decide as to their responsibility and competency. The department or delegated agency may require a contractor to provide a bond furnished by a surety company authorized to do business in this state, for the proper performance of each contract.

SECTION 58. 16.75 (6) (c) of the statutes is amended to read:

16.75 (6) (c) If the governor or, if acting as the governor's designee, the secretary determines that it is in the best interest of this state to do so, he or she may, ~~with the approval of the governor,~~ waive the requirements of subs. (1) to (5) and may purchase supplies, ~~material~~ materials, equipment, or contractual services, other than printing and stationery, from a private source other than a source specified in par. (b). Except as provided in sub. (2g) (c), if the cost of the purchase is expected to exceed \$25,000

\$50,000, the department shall first publish a class 2 notice under ch. 985 or post a notice on the Internet at the site determined or approved by the department under sub. (1) (b) describing the materials, supplies, equipment, or contractual services to be purchased, stating the intent to make the purchase from a private source without soliciting bids or competitive sealed proposals and stating the date on which the contract or purchase order will be awarded. The date of the award shall be at least 7 days after the date of the last insertion or the date of posting on the Internet.

SECTION 59. 16.75 (6) (d) of the statutes is amended to read:

16.75 (6) (d) If the governor or, if acting as the governor's designee, the secretary determines that it is in the best interest of this state to do so, he or she may issue a general waiver of the requirements of subs. (1) to (5) permitting the purchase of specified materials, supplies, equipment, or contractual services, except printing and stationery, from a private source. A general waiver may be issued for any period up to one year. The governor or, if acting as the governor's designee, the secretary may impose any necessary or appropriate condition or restriction on the waiver.

SECTION 60. 16.75 (8) (a) 1. of the statutes is amended to read:

16.75 (8) (a) 1. The department, any ~~other designated purchasing agent under s. 16.71 (1) delegated agency~~, any agency making purchases under s. 16.74, and each authority other than the University of Wisconsin Hospitals and Clinics Authority, the Lower Fox River Remediation Authority, and the Health Insurance Risk-Sharing Plan Authority shall, to the extent practicable, make purchasing selections using specifications developed under s. 16.72 (2) (e) to maximize the purchase of materials utilizing recycled materials and recovered materials.

SECTION 61. 16.75 (9) of the statutes is amended to read:

16.75 (9) The department, any other designated purchasing agent under s. 16.71 (1) delegated agency, any agency making purchases under s. 16.74, and any authority other than the University of Wisconsin Hospitals and Clinics Authority, the Lower Fox River Remediation Authority, and the Health Insurance Risk-Sharing Plan Authority shall, to the extent practicable, make purchasing selections using specifications prepared under s. 16.72 (2) (f).

SECTION 62. 16.75 (10e) (a) of the statutes is amended to read:

16.75 (10e) (a) In this subsection, “energy consuming equipment” means any equipment that is designed for heating, ventilation, air conditioning, water heating or cooling, lighting, or refrigeration, ~~or any other function, and that consumes energy.~~

SECTION 63. 16.75 (10e) (b) of the statutes is amended to read:

16.75 (10e) (b) If s. 16.855 (10s) (a) provides an applicable standard for the type of agency energy consuming equipment being purchased and the purchase will cost more than \$5,000 per unit the department, any other designated purchasing agent under s. 16.71 (1) delegated agency, any agency making purchases under s. 16.74, and any authority may not purchase that type of energy consuming equipment unless the specifications for the equipment meet the applicable standards. If there is an applicable standard under s. 16.855 (10s) (a), but the energy consuming equipment meeting that standard is not reasonably available, the department, ~~purchasing agent~~ delegated agency, agency, or authority shall ensure, for purchases over \$5,000 per unit, that the energy consuming equipment that is purchased maximizes energy efficiency to the extent technically and economically feasible. The department, ~~purchasing agent~~ delegated agency, agency, or authority shall not determine that energy consuming equipment that meets the applicable standard under s. 16.855 (10s) (a) either is not reasonably available on the basis of cost alone

or is not cost-effective unless the difference in the cost of the purchase and installation of the equipment that meets the standard and the equipment that would otherwise be installed is greater than the difference in the cost of operating the equipment that meets the standard and the equipment that would otherwise be installed over the anticipated life of the equipment.

SECTION 64. 16.75 (10m) of the statutes is amended to read:

16.75 (10m) The department, any other designated purchasing agent under s. 16.71 (1) delegated agency, any agency making purchases under s. 16.74, and any authority shall not enter into any contract or order for the purchase of materials, supplies, equipment, or contractual services with a person if the name of the person, or the name of an affiliate of that person, is certified to the department by the secretary of revenue under s. 77.66.

SECTION 65. 20.505 (1) (kf) of the statutes is amended to read:

20.505 (1) (kf) *Procurement services.* For administration of the department's procurement functions under subch. IV of ch. 16. All moneys received from state agencies under s. 16.71 (6) for procurement services provided by the department to the agencies and, from assessments for procurement savings realized by the agencies receiving those services, and from agencies and vendors under s. 16.701 (1m) for costs of the electronic procurement system under that section.

SECTION 66. 25.61 of the statutes is amended to read:

25.61 VendorNet fund. There is created a separate nonlapsible trust fund designated as the VendorNet fund consisting of all revenues accruing to the state from fees assessed under s. 16.701 (1) and (2) and from gifts, grants, and bequests made for the purposes of s. 16.701 (1) and (2) and moneys transferred to the fund from other funds.

SECTION 9301. Initial applicability; Administration.

(1) STATE PROCUREMENT.

(a) *Contracts for services.* The treatment of sections 16.705 (1r) (intro.) and (9) and 16.75 (1) (a) 1. (with respect to awards or contracts made by a delegated agency) and 2., (b) 1., 2., and 3., and (c), (1m), (2m) (a), (b) 1., 2., and 3., (c), (d), (e), (f), and (g), (3m) (b) 1., 2., and 3., (3t) (c) (intro.), (5), (6) (c) and (d), (8) (a) 1., (9), (10e) (a) and (b), and (10m) of the statutes first applies to bids or proposals solicited on the effective date of this paragraph.

(b) *Cost-benefit analyses.* The renumbering and amendment of section 16.705 (2) of the statutes and the creation of section 16.705 (2) (b) of the statutes first apply to cost-benefit analyses and continued appropriateness reviews required on the effective date of this paragraph.

(END)